

appropriate) for a station authorization designating that single location as the permanent location shall be filed at least 90 days prior to the expiration of the 6-month period.

(ii) The station shall be used only for rendition of communication service at a remote point where the provision of wire facilities is not practicable within the required time frame.

(iii) The antenna structure height employed at any location shall not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height for each location has been obtained from the Commission prior to erection of the antenna. See § 101.125.

(2) Applications for authorizations to operate stations at temporary locations under the provisions of this section shall be made upon FCC Form 402 or 494, as appropriate. Blanket applications may be submitted for the required number of transmitters.

(3) The licensee of stations which are authorized pursuant to the provisions of paragraph (b) of this section shall notify the Commission at least five (5) days prior to installation of the facilities, stating:

(i) The call sign, manufacturer's name, type or model number, output power and specific location of the transmitter(s).

(ii) The maintenance location for the transmitter.

(iii) The location of the transmitting or receiving station with which it will communicate and the identity of the correspondent operating such facilities.

(iv) The exact frequency or frequencies to be used.

(v) The public interest, convenience and necessity to be served by operation of the proposed installation.

(vi) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs from the previous notification, written notice thereof promptly shall be given to the Commission.

(vii) A notification shall include compliance with the provisions of § 101.21(e) when operations are to be conducted in the area of other terrestrial microwave stations and with the provisions of § 101.21(e) when operations are to be conducted within the coordination distance contours of a fixed earth station.

(viii) Where the notification contemplates initially a service which is to be rendered for a period longer than 90 days, the notification shall contain a showing as to why

application should not be made for regular authorization.

(4) Less than 5 days advance notice may be given when circumstances require shorter notice provided such notice is promptly given and the reasons in support of such shorter notice are stated.

(5) A copy of the notification shall be kept with the station license.

(c) Prior coordination.

(1) Stations authorized under this section may complete the prior coordination process orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. The requirements under § 101.103(d)(2)(i) for written documentation shall apply to such oral notice.

(d) Certification.

Any applicant under this section must submit a certification that neither the applicant nor any party to the applicant is subject to a denial of Federal benefits pursuant to § 5301 of the Anti-Drug Abuse Act of 1988, as required by § 1.2002 of this Chapter.

(e) **Conditional authorization**

(1) An applicant for a new point-to-point microwave radio station(s) or a modification of an existing station(s) in the 3,700-4,200; 5,925-6,425; 6,525-6,875; 10,550-10,680; 10,700-11,700; 11,700-12,200; 12,200-12,700; 12,700-13,200; 13,200-13,250; 17,700-19,700; and 21,200-23,600 MHz bands (see § 101.147 for specific service usage) may operate the proposed station(s) during the pendency of its applications(s) upon the filing of a properly completed formal application(s) that complies with Subpart B of Part 101 of the Commission's Rules if the applicant certifies that the following conditions are satisfied:

(i) The frequency coordination procedures of § 101.103 have been successfully completed;

(ii) The antenna structure(s) has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation safety as required by Subpart B of Part 17 of the Commission's Rules; or the antenna or tower structure does not exceed 6.1 meters above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied by the Federal Aviation Administration and cleared by the FCC;

(iii) The grant of the application(s) does not require a waiver of the Commission's Rules:

(iv) The applicant has determined that the facility(ies) will not significantly affect the environment as defined in § 1.1307 of the Commission's Rules;

(v) The station site(s) does not lie within 56.3 kilometers of any international border or within a radio "Quiet Zone" identified in § 101.123, or if operated on frequencies in the 17,700-19,700 MHz band, the station site(s) does not lie within the states of Colorado, Maryland and Virginia and the District of Columbia; and

(vi) The filed application(s) does not propose to operate in the 10.6-10.68 GHz band, or in the 21.2-23.6 GHz band with an E.R.P. greater than 55 dBm pursuant to § 101.147(s).

(vii) The filed application(s) is consistent with the proposal that was coordinated pursuant to § 101.103 of the Commission's Rules.

(2) conditional authority ceases immediately if the application(s) is returned by the Commission because it is not acceptable for filing.

(3) A conditional authorization pursuant to (1) and (2) above is evidenced by retaining the original executed conditional licensing Certification Form with the station records. Conditional authorization does not prejudice any action the Commission may take on the subject application(s). Conditional authority is accepted with the express understanding that such authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. An applicant operating pursuant to this conditional authority assumes all risks associated with such operation, the termination or modification of the conditional authority, or the subsequent dismissal or denial of its application(s).

(4) The Certification Form, or a copy thereof, must be posted at each station operating pursuant to this rule section consistent with § 101.215.

§ 101.33 Who may sign applications.

See Part 1 of this chapter §§ 1.743 and 1.913, for practices and procedures governing signatures on applications, amendments and related statements of fact.

Processing of Applications

§ 101.35 Preliminary processing of applications.

(a) Applications received for filing are given a file number. The assignment of a file number to an application is for administrative convenience and does not indicate the acceptance of the application for filing and processing and does not preclude the subsequent return of the application.

(b) Applications that are incomplete with respect to answers, supplementary statements, execution, or other matters of a formal character will be considered defective and may be returned to the applicant with a brief statement as to such defects. If an applicant is requested by the Commission to file any additional documents or information not included in the prescribed application form, failure to comply with such request will be deemed to render the application defective, and such application may be dismissed. Applications will also be deemed to be defective and may be returned to the applicant in the following cases:

(1) Statutory disqualification of applicant;

(2) Proposed use or purpose of station would be unlawful;

(3) Requested frequency is not allocated for assignment for the service proposed;

(4) The submitted filing fee (if required) is insufficient;

(5) The application does not demonstrate compliance with the special requirements applicable to the radio service involved;

(6) The applications does not include all necessary exhibits;

(7) The application fails to meet any other Commission requirements.

(c) Any application that has been returned to the applicant for correction will be processed in original order of receipt when resubmitted if it is received within 60 days from the date on which it was returned to the applicant and the change does not involve a major amendment. If the application is not resubmitted within the prescribed time, it will be treated as a new application and considered at the time other applications received on the same date are considered.

(d) Applications considered defective under paragraph (b) of this section may be accepted for filing if:

(1) The application is accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict; or

(2) The Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement.

§ 101.37 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of common carrier applications and major amendments thereto;

(2) Significant Commission actions concerning these applications;

(3) The receipt of common carrier applications for minor modifications made pursuant to § 101.59;

(4) Information which the Commission in its discretion believes of public significance; and

(5) Special environmental considerations as required by Part 1 of this chapter.

(b) A public notice will not normally be issued for any of the following applications:

(1) For authorization of a minor technical change in the facilities of a proposed or authorized station where such a change would not be classified as a major amendment to a pending application, as defined by § 101.29, or as a minor modification to a license pursuant to § 101.59;

(2) For temporary authorization pursuant to § 101.31;

(3) For an authorization under any of the proviso clauses of § 308(a) of the Communications Act of 1934 (47 U.S.C. § 308(a));

(4) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(5) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

(c) Except as otherwise provided in this Part (e.g., § 101.59), no application that has appeared on public notice will be granted until the expiration of a period of thirty days following the issuance of the public notice listing the application, or any major amendment thereto, or until the expiration of a period of thirty days following the issuance of a public notice identifying the tentative selectee of a random selection process, whichever is later.

(d) The listing of an application on public notice as accepted for filing does not indicate that the application has been found by the Commission to be acceptable for filing and does not preclude the subsequent return of the application.

§ 101.39 Dismissal and return of applications.

(a) Except as provided under paragraph (c) of this Section and under § 101.41, any application may, upon written request, be dismissed without prejudice as a matter of right prior to the adoption date of any final Commission action or the application's designation for hearing or comparative evaluation.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing, after selection through the comparative evaluation procedure of § 101.51, or after selection as a tentative selectee in a random selection proceeding, only if:

(1) A written petition is submitted to the Commission and, in the case of applications designated for hearing or comparative evaluation, is properly served upon all parties of record:

(2) The petition is submitted before the issuance date of a public notice of Commission action denying the application; and

(3) The petition complies with the provision of § 101.41 (whenever applicable) and demonstrates good cause.

(c) Except as provided under § 101.41, an application designated for inclusion in the random selection process may be dismissed without prejudice as a matter of right if the applicant requests its dismissal at least 2 days prior to a random selection proceeding.

(d) Dismissal for failure to prosecute or for failure to respond to official correspondence or requests for additional information within a specified time period will be without prejudice prior to its designation for hearing, or tentative selection by the random selection process. Dismissal may be with prejudice after selection of the comparative evaluation process, or after selection as a tentative selectee in a random selection proceeding.

§ 101.41 Ownership changes and agreements to amend or dismiss applications or pleadings.

(a) Except as provided in paragraph (b) of this section, applicants or any other parties in interest to pending applications must comply with the provisions of this section whenever:

(1) They participate in any agreement (or understanding) which involves any consideration promised or received, directly or indirectly, including any agreement (or understanding) for merger of interests or the reciprocal withdrawal of applications; and

(2) The agreement (or understanding) may result in either:

(i) A proposed substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under § 310(d) of the Communications Act of 1934 [47 U.S.C. § 310(d)], or

(ii) Proposed withdrawal, amendment or dismissal of any application(s), amendment(s), petition(s), pleading(s), or any combination thereof, which would thereby permit the grant without hearing, comparative evaluation under of § 101.51, or random selection of an application previously in contested status.

(b) The provisions of this section will not be applicable to any engineering agreement (or understanding) that:

(1) Resolves frequency conflicts with authorized stations or other pending applications without the creation of new or increased frequency conflicts; and

(2) Does not involve any consideration promised or received, directly or indirectly (including any merger of interests or reciprocal withdrawal of applications), other than the mutual benefit of resolving the engineering conflict.

(c) For any agreement subject to this section, the applicant of an application which would remain pending pursuant to such an agreement will be considered responsible for the compliance by all parties with the procedures of this section. Failure of the parties to comply with the procedures of this section will constitute a defect in those applications which are involved in the agreement and remain in a pending status.

(d) The principals to any agreement or understanding subject to this section must comply with the standards of paragraph (e) of this section in accordance with the following procedure:

(1) Within ten (10) days after entering into the agreement, the parties thereto must jointly notify the Commission in writing of the existence and general terms of such agreement, the identity of all of the participants and the applications involved;

(2) Within thirty (30) days after entering into the agreement, the parties thereto must file any proposed application amendments, motions, or requests together with a copy of the agreement which clearly sets forth all terms and provisions, and such other facts and information as necessary to satisfy the standards of paragraph (e) of this section. Such submission must be accompanied by the certification by affidavit of each principal to the agreement declaring that the statements made are true, complete, and correct to the best of their knowledge and belief, and are made in good faith.

(3) The Commission may request any further information which in its judgment it believes is necessary for a determination under paragraph (e) of this section.

(e) The Commission will grant an application (or applications) involved in the agreement (or understanding) only if it finds upon examination of the information submitted, and upon consideration of such other matters as may be officially noticed, that the agreement is consistent with the public interest, and the amount of any monetary consideration and the cash value of any other consideration promised or received is not in excess of those legitimate and

prudent costs directly assignable to the engineering, preparation, filing and advocacy of the withdrawn, dismissed, or amended application(s), amendment(s), petition(s), pleading(s), or any combination thereof. Where such costs represent the applicant's in-house efforts, these costs may include only directly assignable costs and must exclude general overhead expenses. [The treatment to be accorded such consideration for interstate rate making purposes will be determined at such time as the question may arise in an appropriate rate proceeding.] An itemized accounting must be submitted to support the amount of consideration involved except where such consideration (including the fair market value of any non-cash consideration) promised or received does not exceed one thousand dollars (\$1,000.00). Where consideration involves a sale of facilities or merger of interests, the accounting must clearly identify that portion of the consideration allocated for such facilities or interests and a detailed description thereof, including estimated fair market value. The Commission will not presume an agreement (or understanding) to be prima facie contrary to the public interest solely because it incorporates a mutual agreement to withdraw pending application(s), amendment(s), petition(s), pleading(s), or any combination thereof.

§ 101.43 Opposition to applications.

(a) Any party in interest may file with the Commission a petition to deny any application for which public notice is required. All such petitions must:

(1) Identify the application or applications including applicant's name, station location, Commission file numbers and radio service involved with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of this Part and Part 1;

(3) Contain specific allegations of fact (except for those of which official notice may be taken), supported by affidavit of a person or persons with personal knowledge thereof and be sufficient to make a prima facie showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of such applications or major amendments thereto, or, identifying the tentative selectee of a random selection proceeding (unless the Commission otherwise extends the deadline); and

(5) Contain a certificate of service showing that the applicant has been mailed a copy of the petition no later than the date on which the petition is filed with the Commission.

(b) The applicant may file an opposition to any petition to deny and the petitioner may file a reply thereto in which allegations of fact or denials thereof must be supported by an affidavit of a person or persons with personal knowledge thereof and be clearly identified. The

applicant must serve a copy of the opposition on the petitioner, and the petitioner must serve a copy of its reply on the applicant. The time for filing such oppositions and replies are provided in § 1.45.

(c) Notwithstanding the provisions of paragraph (a) of this section, before Commission action on any application for an instrument of authorization, any person may file informal objections to the grant. The Commission will consider informal objections, but not necessarily discuss them in a written opinion, if the objection is filed at least one day prior to action on the application and the objection is signed by the submitting person with a disclosure of that person's interest. Such objections may be submitted in letter form. The limitation on pleadings and time for filing pleadings provided for in § 1.45 will not be applicable to any objections duly filed pursuant to this paragraph.

(d) Petitions to deny not filed in accordance with paragraph (a) of this section will be treated as informal objections.

§ 101.45 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" exists when the levels of § 101.105 are exceeded, or when there is a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) A common carrier application will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with the other application; and

(2) The application is received by the Commission in a condition acceptable for filing by whichever "cut-off" date is earlier:

(i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or

(ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application established the date prescribed in paragraph (b)(2) of this section.

regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application. [For example, applications A, B, and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B, C must be filed within the "cut-off" period established by A even though C is not directly mutually exclusive with A.]

(d) Private operational fixed point-to-point microwave applications for authorization under this Part will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications in accordance with the provisions of § 1.227(b)(4).

(e) An application otherwise mutually exclusive with one or more previously filed applications, but filed after the appropriate date prescribed in paragraphs (b) or (d) of this section, will be returned without prejudice and will be eligible for refiling only after final action is taken by the Commission with respect to the previously filed application (or applications).

(f) For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by § 101.29), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to § 101.51), and the Commission or the presiding officer accepts the amendment pursuant to § 101.29(b);

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications which would otherwise require resolution by hearing, by comparative evaluation pursuant to § 101.51, or by random selection pursuant to § 101.49 provided that the amendment does not create new or additional frequency conflicts;

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the "cut-off" requirements of this section is granted;

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 101.41 whereby two or more applicants entitled to comparative consideration of their applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration;

(5) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts; or

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option;

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure; or

(iii) The discontinuance or substantial technological obsolescence of specified equipment, whenever the application has been pending before the Commission for two or more years from the date of its filing.

(g) Applicants for the 932.5-935/941.5-944 MHz bands shall select a frequency pair. Applicants for these bands may select an unpaired frequency only upon a showing that spectrum efficiency will not be impaired and that unpaired spectrum is not available in other bands. During the initial filing window, frequency coordination is not required, except that an application for a frequency in the 942-944 MHz band must be coordinated to ensure that it does not affect an existing broadcast auxiliary service licensee. After the initial filing window, an applicant must submit evidence that frequency coordination has been performed with all licensees affected by the application. All frequency coordination must be performed in accordance with § 101.103 of the Commission's Rules. In the event of mutually exclusive applications occurring during the initial filing window for the 932.5-935/941.5-944 MHz bands, applicants shall be given the opportunity to resolve these situations by applying for an alternative frequency pair, if one is available. To the extent that there are no other available frequencies or to the extent that mutually exclusive applications remain after this process is concluded, lotteries shall be conducted for each frequency pair among all remaining mutually exclusive applications, assuming appropriate coordination with existing broadcast auxiliary stations can be concluded, where necessary. In the event of mutually exclusive applications being received for these bands on the same day after the initial filing window has closed and a subsequent filing window opened, lotteries shall be conducted for each frequency pair among all mutually exclusive applications.

§ 101.47 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity.

(b) The grant will be without a formal hearing if, upon consideration of the application, any pleadings of objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to comparative consideration (pursuant to § 101.45) with another application (or applications), except where the competing applicants have chosen the comparative evaluation procedure of § 101.51 and a grant is appropriate under that procedure;

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is legally, technically, financially and otherwise qualified, and a grant of the application would serve the public interest.

(c) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it will inform the applicant of the reasons therefor, and the grant will be considered final unless the Commission revises its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration that:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(d) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements.

(3) The application is entitled to comparative consideration (under § 101.45) with another application (or applications); or

(4) The application is entitled to comparative consideration (pursuant to § 101.45) and the applicants have chosen the comparative evaluation procedure of § 101.51 but the Commission deems such procedure to be inappropriate.

(e) The Commission may grant, deny, or take other action with respect to an application designated for a formal hearing pursuant to paragraph (d) of this section or Part 1 of this chapter.

(f) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random selection process (in specified services under this rules part), designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 101.51, as appropriate, if it appears:

(1) That some or all of the applications were not filed in good faith, but were filed for the purpose of delaying or hindering the grant of another application;

(2) That the public interest requires the prompt establishment of radio service in a particular community or area;

(3) That a delay in making a grant to any applicant until after the conclusion of a hearing or a random selection proceeding on all applications might jeopardize the rights of the United States under the provision of an international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or of the provisions of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with Subpart A of Part 1 of this chapter.

§ 101.49 Grants by random selection.

(a) If an application for an authorization in the Digital Electronic Message Service (DEMS) is mutually exclusive with another such application and satisfies the requirements of § 101.45, the applicant may be included in the random selection process set forth in §§ 1.821, 1.822 and 1.825 of this chapter.

(b) Renewal applications will not be included in a random selection process.

§ 101.51 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications in services under this rules part where the random selection process does not apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) in this section if:

(1) The applications are entitled to comparative consideration pursuant to § 101.45;

(2) The applications have not been designated for formal evidentiary hearing; and

(3) The Commission determines, initially or at any time during the procedure outlined in paragraph (b) of this section, that such procedure is appropriate, and that, from the information submitted and consideration of such other matters as may be officially noticed, there are no substantial and material questions of fact presented (other than those relating to the comparative merits of the applications) which would preclude a grant under paragraphs (a) and (b) of § 101.47.

(b) Provided that the conditions of paragraph (a) of this section are satisfied, applicants may request the Commission to act upon their mutually exclusive applications without a formal hearing pursuant to the summary procedure outlined below:

(1) To initiate the procedure, each applicant will submit to the Commission a written statement containing:

(i) A waiver of the applicant's right to a formal hearing;

(ii) A request and agreement that, in order to avoid the delay and expense of a comparative formal hearing, the Commission should exercise its judgment to select from among the mutually exclusive applications that proposal (or proposals) which would best serve the public interest; and

(iii) The signature of a principal (and the principal's attorney if represented).

(2) After receipt of the written requests of all of the applicants the Commission (if it deems this procedure appropriate) will issue a notice designating the comparative criteria upon which the applications are to be evaluated and will request each applicant to submit, within a specified period of time, additional information concerning the applicant's proposal relative to the comparative criteria.

(3) Within thirty (30) days following the due date for filing this information, the Commission will accept concise and factual argument on the competing proposals from the rival applicants, potential customers, and other knowledgeable parties in interest.

(4) Within fifteen (15) days following the due date for the filing of comments, the Commission will accept concise and factual replies from the rival applicants.

(5) From time to time during the course of this procedure the Commission may request additional information from the applicants and hold informal conferences at which all competing applicants will have the right to be represented.

(6) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed the Commission will issue a decision granting one (or more) of the proposals which it concludes would best serve the public interest, convenience and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will deny the other application(s). This decision will be considered final.

License Transfers, Modifications, Conditions and Forfeitures

§ 101.53 Assignment or transfer of station authorization.

(a) No station license, or any rights thereunder, may be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation or any other entity holding any such license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.

(b) For purposes of this section, transfers of control requiring Commission approval must include any and all transactions that:

(1) Change the party controlling the affairs of the licensee, or

(2) Affect any change in a controlling interest in the ownership of the licensee, including changes in legal or equitable ownership, or

(c) Requests for transfer of control or assignment authority must be submitted on the application form prescribed by § 101.13 or § 101.15 of this chapter, and must be accompanied by the applicable showings required by §§ 101.19, 101.21, and 101.55 of this part.

(d) The Commission must be promptly notified in writing when a licensee is voluntarily or involuntarily placed in bankruptcy or receivership and when an individual licensee, a member of a partnership which is a licensee, or a person directly or indirectly in control of a corporation which is a licensee, dies or becomes legally disabled. Within thirty days after the occurrence of such bankruptcy, receivership, death or legal disability, an application of

involuntary assignment of such license, or involuntary transfer of control of such corporation, must be filed with the Commission, requesting assignment or transfer to a successor legally qualified under the laws of the place having jurisdiction over the assets involved.

(e) The assignor of a station licensed under this part may retain no right of reversion or reassignment of the license and may not reserve the right to use the facilities of the station for any period whatsoever. No assignment of license will be granted or authorized if there is a contract or understanding, express or implied, pursuant to which a right of reversion or reassignment of the license or right to use the facilities are retained as partial or full consideration for the assignment or transfer.

(f) No special temporary authority, or any rights thereunder, may be assigned or otherwise disposed of, directly or indirectly, voluntarily or involuntarily, without prior Commission approval.

§ 101.55 Considerations involving transfer or assignment applications.

(a) Licenses may not be assigned or transferred prior to the completion of construction of the facility. However, consent to the assignment or transfer of control of such a license may be given prior to the completion of construction where:

(1) The assignment or transfer does not involve a substantial change in ownership or control of the authorized facilities; or in

(2) The assignment or transfer of control is involuntary due to the licensee's bankruptcy, death, or legal disability.

(b) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses whenever applications (except those involving pro forma assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities:

(1) Authorized following a comparative hearing and have been operated less than one year, or;

(2) Involve facilities that have not been constructed. or;

(3) Involve facilities that were authorized following a random selection proceeding in which the successful applicant received preference and that have been operated for less than one year.

At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or

operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the acquisition of the license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(c) If a proposed transfer of radio facilities is incidental to a sale or other facilities or merger of interests, any showing requested under paragraph (a) of this section must include an additional exhibit that:

(1) Discloses complete details as to the sale of facilities or merger of interests;

(2) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interests; and

(3) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

(d) For the purposes of this section, the one year period is calculated using the following dates (as appropriate):

(1) The initial date of grant of the license, excluding subsequent modifications;

(2) The date of consummation of an assignment or transfer, if the station is acquired as the result of an assignment of license, or transfer of control of corporate licensee; or

(3) The median date of the applicable commencement dates (determined pursuant to paragraphs (d)(1) and (2) of this section) if the transaction involves a system (such as a Private Operational Fixed Point-to-Point Microwave system) of two or more stations. (The median date is that date so selected such that fifty percent of the commencement dates of the total number of stations, when arranged in chronological order, lie below it and fifty percent lie above it. When the number of stations is an even number, the median date will be a value half way between the two dates closest to the theoretical median).

§ 101.57 Modification of station license.

(a) Except as provided in § 101.59, no modification of a license issued pursuant to this part (or the facilities described thereunder) may be made except upon application to the Commission.

(b) No application for modification to extend a license construction period will be granted for delays caused by lack of financing or for lack of site availability. Applications for time extensions for other reasons must include a verified statement from the applicant showing that the licensee has made diligent efforts to construct the facilities and:

(1) That additional time is required due to circumstances beyond the applicant's control, in which case the applicant must describe such circumstances and must set forth with specificity and justify the precise extension period requested; or

(2) That there are unique and overriding public interest concerns that justify such an extension, in which case the applicant must identify such interests and must set forth and justify a precise extension period.

(c) Notwithstanding the provisions of paragraph (b), when a station license has been assigned or transferred pursuant to § 101.53, any extension of time will be limited so that the time left to construct after Commission grant of the transfer or assignment will be no more than the time remaining for construction at the date of the filing of the application for transfer or assignment.

(d) Modification of license is required for the following changes in authorized stations:

(1) Any change in frequencies used;

(2) Any change in antenna azimuth;

(3) Any change in antenna beamwidth;

(4) Any change in antenna or passive repeater location greater than 1 second or which involves a requirement for special aeronautical study;

(5) Any change in antenna polarization;

(6) Any change in antenna height;

(7) Any change in the size of passive reflectors or repeaters associated with the facilities of an authorized station;

(8) Any increase in emission bandwidth beyond that authorized;

(9) Any change in the type of emission;

(10) Any change in authorized equivalent isotropically radiated power in excess of 3 dB (a 2-to-1 ratio);

(11) Substitution of equipment having a greater frequency tolerance.

(e) When the name of the licensee is changed (without changes in the ownership, control, or corporate structure), or when the mailing address is changed (without changing the authorized location of the fixed station) a formal application for modification of license is not required.

However, the licensee must notify the Commission within thirty days of the effective date of these changes. The notice, which may be in letter form, must contain the name and address of the licensee as they appear in the Commission's records, the new name or address, the call signs and classes of all radio stations authorized to the licensee under this part and the radio service in which each station is authorized. The notice must be sent to the Federal Communications Commission, Gettysburg, PA 17325 and a copy must be maintained with the license of each station until a new license is issued.

§ 101.59 Processing of applications for facility minor modifications.

(a) Unless an applicant is notified to the contrary by the Commission, as of the twenty-first day following the date of public notice, any application that meets the requirements of paragraph (b) of this section and proposes only the change specified in paragraph (c) of this section will be deemed to have been authorized by the Commission.

(b) An application may be considered under the procedures of this section only if:

(1) It is in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, or Digital Electronic Message Services;

(2) The cumulative effect of all such applications made within any 60 day period does not exceed the appropriate values prescribed by paragraph (c) of this section;

(3) The facilities to be modified are not located within 56.3 kilometers (35 miles) of the Canadian or Mexican border;

(4) It is acceptable for filing, is consistent with all of the Commission's rules, and does not involve a waiver request;

(5) It specifically requests consideration pursuant to this section; and

(6) Written notice of such filing has been provided to all parties otherwise required to be provided a prior coordination notice in accordance with § 101.103(d) or, in the Digital Electronic Message Services, a copy of the application has been served on those who also were served under § 101.509.

(c) The modifications that may be authorized under the procedures of this section are:

(1) Changes in a transmitter and existing transmitter operating characteristics, or protective configuration of transmitter, provided that:

(i) In all radio services other than Digital Electronic Message Service, any increase in equivalent isotropically radiated power is less than 3 dB over the previously

authorized output power, and in Digital Electronic Message Service, any increase in equivalent isotropically radiated power is 1.5 dB or less over the previously authorized equivalent isotropically radiated power;

(ii) The necessary bandwidth is not increased beyond the previously authorized bandwidth;

(2) Changes in the center line height of an antenna, provided that:

(i) In all radio services except the Digital Electronic Message Service, any increase in antenna height is less than 3.0 meters (10 feet) above the previously authorized height;

(ii) In the Digital Electronic Message Service, any increase in antenna height is less than 3.0 meters (10 feet) above the previously authorized height; and

(iii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters (20 feet) or less (above ground or man-made structure, as appropriate) after the change is made.

(3) Change in the geographical coordinates of a transmit station, receive station or passive facility by five (5) seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by Part 17 of the rules for antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of §101.21(a).

(d) Upon grant of an application under the procedure of this section and at such time that construction begins, the applicant must keep a complete copy of the application (including the filing date) with the station license if construction begins prior to receipt of the authorization.

§ 101.61 Certain modifications not requiring prior authorization.

(a) Equipment in an authorized radio station may be replaced without prior authorization or notification if the replacement equipment is equivalent to the replaced equipment.

(b) Licensees of fixed stations in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, or Digital Electronic Message Services, may make the facility changes listed in paragraph (c) of this section without obtaining prior Commission authorization, if:

(1) Frequency coordination procedures, as necessary, are complied with in accordance with § 101.103(d) or, in the Digital Electronic Message Services, a copy of the notification described in (b)(3) is served on those who were served under § 101.509, and

(2) The cumulative effect of all facility changes made within any 60 day period does not exceed the appropriate values prescribed by paragraph (c) of this section, and

(3) The Commission is notified of changes made to facilities by the submission of a completed FCC Form 494 within thirty days after the changes are made.

(c) Modifications that may be made without prior authorization under paragraph (b) of this section are:

(1) Change or modification of a transmitter, when:

(i) The replacement or modified transmitter is type-accepted (or type-notified) for use under this Part and is installed without modification from the type-accepted (or type notified) configuration;

(ii) The type of modulation is not changed;

(iii) The frequency stability is equal to or better than the previously authorized frequency stability; and

(iv) The necessary bandwidth and the output power do not exceed the previously authorized values.

(2) Addition or deletion of a transmitter for protection without changing the authorized power output (e.g. hot standby transmitters):

(3) Change to an antenna (other than any change involving a periscope antenna system), when:

(i) For the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, and Local Television Transmission Services, the new antenna conforms to the requirements of § 101.115 and has essentially the same or better radiation characteristics than the previously authorized antenna.

(ii) For the Digital Electronic Message Service, the new antenna conforms with § 101.517 and the gain of the new antenna does not exceed that of the previously authorized antenna by more than one dB in any direction.

(4) Any technical changes that would decrease the effective radiated power.

(5) Change to the height of an antenna system, when:

(i) The new center line height (measured at the center-of-radiation) is within ± 1.5 meters of the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters or less (above ground or man-made structure, as appropriate) after the change is made.

(6) Decreases in the overall height of an antenna structure, provided that, when notice to the FAA of proposed construction was required by Part 17 of the Rules for the antenna structure at the previously authorized height, the applicant must comply with the provisions of § 101.21(a).

(7) Changes in the azimuth of the center of the main lobe of radiation of a point-to-point station's antenna by a maximum of one degree.

(8) Changes to the transmission line and other devices between the transmitter and the antenna when the effective radiated power of the station is not increased by more than one dB.

(d) Licensees may notify the Commission of permissible changes or correct erroneous information on a license not involving a major change (*i.e.*, a change that would be classified as a major amendment as defined by § 101.29) without obtaining prior Commission approval by filing FCC Form 494.

§ 101.63 Period of construction; certification of completion of construction.

(a) Each station authorized under this part must be in operation within 18 months from the initial date of grant. Modification of an operational station must be completed within 18 months of the date of grant of the applicable modification request.

(b) Failure to timely begin operation means the authorization cancels automatically and must be returned to the Commission. Neither the capability for transmission nor the transmission of color bars or similar test signals constitutes operation. For purposes of this rule, the transmission of operational traffic, not test or maintenance signals, is necessary and sufficient to constitute operation.

(c) The frequencies associated with all point-to-multipoint authorizations which have cancelled automatically or otherwise been recovered by the Commission will again be made available for reassignment on a date and under terms set forth by Public Notice.

(d) Requests for extension of time to be in operation may be granted upon a showing of good cause, setting forth in detail the applicant's reasons for failure to have the facility operating in the prescribed period. Such requests must be submitted no later than 30 days prior to the end of the prescribed period to the Federal Communications Commission.
Gettysburg, PA 17325-7245.

(e) Construction of any station must be completed by the date specified in the license as the termination date of the construction period. Licensees who fail to complete construction must return their authorization for cancellation within 5 days after the expiration of the construction period specified on the license.

§ 101.65 Forfeiture and termination of station authorization.

(a) A license will be automatically forfeited in whole or in part without further notice to the licensee upon:

(1) The expiration of the construction period specified therein, or after such additional time as may be authorized by the Commission; or

(2) The expiration of the license period specified therein, unless prior thereto an application for renewal of such license has been filed with the Commission; or

(3) The voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

(b) A license forfeited in whole or in part under the provisions of paragraph (a)(1) or (a)(2) may be reinstated if the Commission, in its discretion, determines that reinstatement would best serve the public interest, convenience and necessity. Petitions for reinstatement filed pursuant to this subsection will be considered only if:

(1) The petition is filed within 30 days of the expiration date set forth in paragraph (a)(1) or (a)(2) of this section, whichever is applicable;

(2) The petition explains the failure to timely file such notification or application as would have prevented automatic forfeiture; and

(3) The petition sets forth with specificity the procedures which have been established to insure timely filings in the future.

(c) A special temporary authorization will automatically terminate upon the expiration date specified therein, or upon failure to comply with any special terms or conditions set forth therein. Operation may be extended beyond such termination date only after application and upon specific authorization by the Commission.

(d) If a station licensed under this part discontinues operation on a permanent basis, the licensee must forward the station license to the Federal Communications Commission, Gettysburg, Pennsylvania 17325, for cancellation. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued. See § 101.305 for additional rules regarding temporary and permanent discontinuation of service.

§ 101.67 License period.

(a) Licenses for stations authorized under this Part will be issued for a period not to exceed 10 years. Unless otherwise specified by the Commission, the expiration of regular licenses shall be on the date (month and day) selected by licensees in the year of expiration.

§ 101.69 Transition of the 2.11-2.13, and 2.16-2.18 GHz bands from the Common Carrier Point-to-Point Fixed Microwave Services and the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz bands from the Private Operational Fixed Point-to-Point Microwave Service to Emerging Technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Common Carrier and Private Operational Fixed Point-to-Point Microwave Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other fixed microwave bands or to other media, or alternatively, would accept a sharing arrangement with the ET Licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations. ET Licensees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Common Carrier and Private Operational Fixed Point-to-Point Microwave Service licensees, with the exception of public safety facilities defined in paragraph (f) of this section, in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology service (two-year voluntary negotiation period), and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period) or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period). When it is necessary for an emerging technology provider or representative of unlicensed device manufacturers to negotiate with a fixed microwave licensee with operations in spectrum adjacent to that of the emerging technology provider, the transition schedule of the entity requesting the move will apply. Public safety facilities defined in paragraph (f) of this section will maintain primary status in these bands until three years after the Commission commences acceptance of applications for an emerging technology service (three-year voluntary negotiation period), and until two years after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (two-year mandatory negotiation period).

(c) The Commission will amend the operation license of the Common Carrier and Private Operational Fixed Point-to-Point Microwave Service operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

(f) Public safety facilities subject to the three-year voluntary and two-year mandatory negotiation periods, are those that the majority of communications carried are used for police, fire, or emergency medical services operations involving safety of life and property. The facilities within this exception are those facilities currently licensed on a primary basis pursuant to the eligibility requirements of § 90.19, Police Radio Service; § 90.21, Fire Radio Service; § 90.27 Emergency Medical Radio Service; and Subpart C of Part 90, Special Emergency Radio Services. Licensees of other Part 101 facilities licensed on a primary basis under the eligibility requirements of Part 90, Subparts B and C, are permitted to request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.